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vancement. *Bruce v. Griscom*, 9 Hun. (N. Y.), 280. The presumption that property put by the father in the name of his son was by way of an advancement is not conclusive, and may be rebutted by proof that the father advanced the greater part of the purchase price and the son the remainder thereof, and it was agreed between them that the son should hold the title for their mutual benefit. *Taylor v. Taylor*, 136 Cal., 92.

EMINENT DOMAIN—STREETS—CONDEMNATION OF LAND REQUIRED FOR RAILROAD PURPOSES.—PORTLAND RY., LIGHT & POWER CO. v. CITY OF PORTLAND, 181 FED., 632.—*Held*, that where a city had only general charter power to open, lay out, establish, widen, alter, extend, vacate, or close streets, and to appropriate and condemn private property therefor, it had no power to condemn a part of a railroad's right of way to construct a street longitudinally along the same, especially where there was no provision for joint use of the property by the railroad company and the public.

The right of eminent domain is not inherent in a municipality but may be conferred upon it by appropriate legislation. *Warner v. Gunnison*, 2 Colo. App., 430; *Butler v. Thomasville*, 74 Ga., 570. Where express statutory authority exists, however, authorizing this action, this will control, but the right must be strictly exercised. *Abbott on Municipal Corporations*, Sec. 1819. It is generally held that the right to appropriate a portion of a railroad company's right of way longitudinally is not conferred by general authority to condemn; that the power must be conferred expressly or by necessary implication. *Ill. Cent. R. R. Co. v. Chicago, Burlington & Northern R. R. Co.*, 122 Ill., 473. The law seems to be well settled that lands once taken for public use cannot, under general laws, without an express act of the legislature for that purpose, be appropriated by proceedings *in invitum* to a different public use. The legislature, as the supreme and sovereign power in the state, may doubtless interfere with property held by a corporation for one purpose, and apply it to another; but the legislature's intention so to do must be stated in clear and express terms, or must appear from necessary implication. *Baltimore & Ohio R. R. Co. v. North*, 103 Ind., 486. As where it appears by the statute or by the application of the statute to the subject matter that the contemplated road cannot reasonably be built without appropriating land already devoted to public use, in which case an implication arises that the legislature intended that such appropriation might be made. *Providence etc. R. R. v. Norwich etc. R. R.*, 138 Mass., 277; *Housatonic R. R. v. Lee & Hudson R. R.*, 118 Mass., 391.

EVIDENCE—PAROL EVIDENCE.—GERMER v. GAMBILL, 131 S. W., 268 (Ky.).—*Held*, that where the true intention of the parties is not expressed in written contract, they may show that the real contract was not reduced to writing through mistake as to the effect of the words or otherwise.

Parol evidence, though not admissible to add to or vary the terms of a written contract, is admissible to prove facts and circumstances for the

purpose of showing the understanding of the parties of its terms. *Drinkhouse v. Surette*, 83 Mass., 443. So where there is a mistake in a contract and the true intentions of the parties are not expressed. *Howland v. Blake*, 97 U. S., 624. And it is admissible to explain the meaning as well as their mutual acts, where there is an ambiguity. *Bates v. Dehaven*, 10 Ind., 319. As well as to show the remainder of a contract, which the writings executed by the parties on their face, show not to have been fully expressed therein. *Miller v. Goodrich*, 53 Mo. App., 430. But these contentions must be proved to the exclusion of every reasonable doubt. *Howland v. Blake*, *supra*; *Goldborough v. Ringbold*, 1 Md. Ch. D., 239.

HOMICIDE—PREVENTING ESCAPE OF PRISONER—ARREST FOR MISDEMEANOR.—*LEWIS v. COMMONWEALTH*, 131 SOUTHWESTERN REPORTER, 517.—*Held*, that a police officer has no right to shoot one arrested for a misdemeanor to prevent his escape.

In general a police officer has no right to do great bodily harm to or take the life of a person arrested for a misdemeanor to prevent his escape. *Head v. Martin*, 85 Ky., 480. Such is the case even if the officer has knowledge of the desperate character of the prisoner, although such circumstances may form a question of fact for the jury. *Commonwealth v. Rhoads*, 23 Pa. Super. Ct., 512. Because the officer is never required to retreat, and may meet force with force, in order to subdue the efforts of the prisoner to escape. *Smith v. State*, 59 Ark., 132; *State v. Garrett*, 60 N. C., 144. The officer may use a deadly weapon and even take the life of the prisoner, if such action is necessary in self-defense to save his own life. *Smith v. State*, 59 Ark., 132. But in any case the officer must be careful not to exceed the reasonable necessity of the case. *Dilger v. Commonwealth*, 88 Ky., 550, 560; *Commonwealth v. Max*, 8 Phila., 422. Some few cases hold that an officer can use violence and even take the life of a prisoner arrested for a misdemeanor, if necessary not only for his own protection but to effect his purpose of preventing an escape. *State v. Dierberger*, 96 Mo., 666. And it has been held that flagrant misdemeanors, as in case of riots or dangerous wounds, may justify the killing of the prisoner to prevent his escape, for the presumption is very great that the offense will turn out to be a felony. *State v. McNally*, 87 Mo., 644.

HUSBAND AND WIFE—WIFE'S SEPARATE ESTATE—CONTRACTS ENFORCEABLE—ASSENT OF HUSBAND.—*BUSHNELL v. BERTOLETT*, 69 S. E. 610 (N. C.). *Held*, that where a married woman signed a contract for a lot of apple trees, and after accepting and paying for a part, refuses to accept and pay for the remainder, the contract is not enforceable against her separate estate. Clark, C. J., *dissenting*.

At common law the contracts of a married woman were absolutely void. *Prentiss v. Paisley*, 25 Fla., 927; *Condon v. Barr*, 49 N. J. L., 53. And, independant of statute, her contracts do not personally bind her, even in equity. *Butler v. Buckingham*, 5 Day (Conn.), 492; *Davis v. Smith*,